

REMARKS

Claims 1, 15-18, 26, 28-32, 35, 42, 43, 47, 50, 58, 60, 61 and 63-65 stand rejected under § 102(b) as being anticipated by U.S. Patent no. 5,737,060 to *Kasha*. Claims 1-6, 9, 13, 17, 22, 25, 26, 28, 29, 31, 32, 43-46, 54, 57, 58 and 60 stand rejected under § 102(e) as being anticipated by U.S. Patent no. 5,953,102 to *Berry*. Claims 1, 2, 5, 6, 10, 13, 17, 26, 30, 31, 35-37, 43, 58 and 62-65 also stand rejected under § 102(e) as being anticipated by U.S. Patent no. 6,364,845 to *Duffy et al.* Claims 7, 8, 41 stand rejected as being obvious over *Duffy et al.* in view of U.S. Patent no. 6,364,845 to *Lawton*.

The Examiner has also indicated that the subject matter of claims 11, 12, 14, 19-21, 23, 24, 27, 33, 34, 39, 40, 48, 49, 51-53, 55, 56 and 59 would be allowable if those claims were written to overcome the claim objections relating thereto.

Applicant respectfully requests that the Examiner reconsider the rejected claims of the Application in view of the comments herein.

I. Specification and Drawing Objections

The Applicant submits the enclosed amendments to the specification and drawings in accordance with the Examiner's comments, which now refer to Figures 12a-12h in the specification and now illustrate "arrow C" in figure 6a. Applicant requests that the Examiner withdraw the objection.

II. Rejections under § 112

The Examiner has objected to claims 9, 11, 12 and 18 as being indefinite with regard to the display. Applicant respectfully submits that the language of the claims is sufficiently definite in view of the specification. Nevertheless, Applicant has amended the claims in view of the Examiner's comments solely for purposes of expediting the

application process. Applicant requests that the Examiner withdraw the rejection accordingly.

### III. Rejections under § 102

The Examiner has rejected claims as being anticipated by either of *Kasha*, *Berry* or *Duffy et al.* Applicant respectfully disagrees. Applicant respectfully reminds the Examiner that for a claim to be anticipated, the claim must be disclosed in a single reference in as complete detail as the language of the claim. For at least the following reasons, Applicant submits that the Examiner's rejection does not set forth a proper rejection of anticipation as elements of the claims are not disclosed in the cited art.

#### A. Independent Claim 1

For example, claim 1 defines elements of an apparatus including as follows:

first visual display means for viewing by said patient and computer processing means producing an output to said first visual display means to cause a display on said visual display means, said display including at least one visual cognitive exertion exercise and at least one visual stimulation image including one or more therapeutic display elements targeted to stimulate selected ones of said receptive cell fields, said therapeutic display elements including one or more moving contrast edges, wherein said therapeutic display elements are displayed on said visual display means so as to provide therapeutic stimulation to said receptive cell fields of a patient whilst said patient is performing said cognitive exertion exercise.

#### (1) Kasha Does Not Anticipate

In rejecting the claim, the Examiner particularly relies on *Kasha* (col. 8 lines 53-55) for the noted elements above relating to a display having a visual cognitive exertion exercise. Applicant submits that the cited reference does not disclose or

teach (expressly or inherently) the Applicant's invention as it would be understood by one skilled in the art.

*Kasha* discloses an apparatus having a display that utilizes a fixation point that may be followed by the test subject and a momentarily shown target. The target is used to test the peripheral vision of the human eye. The cited portions of *Kasha* however do not suggest that the applied test is a visual cognitive exertion exercise. It appears from the Examiner's rejection that the terms of the claim are not being accorded the meaning that would be given to them by those skilled in the art. To this end, where does *Kasha* indicate that the test of its display includes such a visual cognitive exertion exercise as that would be understood based on the Applicant's specification? What exercise of strenuous effort does the system of *Kasha* implement? Simply following a target to test peripheral vision does not involve the claimed exertion element. Applicant respectfully submits that Applicant's invention is not disclosed by the relied on features of *Kasha*.

(2) Berry Does Not Anticipate

The Examiner's rejection based on *Berry* similarly falls short of reciting a teaching of all of the elements of the claim. In fact, the reference even goes further by teaching away from the Applicant's invention. Notably, the apparatus of *Berry* is based on testing an objective physical response identified scientifically as "reflex optokinetic nystagmus" ("RON") which is "an involuntary reaction to certain stimuli." *Berry*, col. 1, lines 55-59. *Berry* goes on to describe its implemented test such that "[t]he vertical bars are moved from left to right in the visual display at a speed sufficient to cause reflex optokinetic nystagmus by the test subject... The eyes of the test subject involuntarily track the visual target as it travels across the screen in the visual display from left to right. *Berry*, col. 7, lines 36-47. Simply put, the disclosed

test for the involuntary response associated with reflex optokinetic nystagmus is not the included visual cognitive exertion exercise of the Applicant's invention as that would be understood by one skilled in that art in view of the Applicant's specification.

(3) Duffy et al. Does Not Anticipate

Finally, the Examiner also relies on *Duffy et al.* for the disclosure of the visual display element of claim 1. To this end, the Examiner asserts that the reference discloses the claimed display including the visual cognitive exertion exercise at col. 11, lines 24-30. The reference teaches that "the outward radial patterns have a focus of expansion 15° to the left or right of center. The visual stimulus is presented to the subject and the subject must determine whether the focus of expansion is on the left or on the right." *Duffy et al.*, col. 11, lines 24-30. Notably, *Duffy et al.* in describing its implementation of that test of optic flow does not indicate that its display has a visual *cognitive* exertion exercise as that would be understood by one skilled in the art. Nor could they. One skilled in the art would not recognize the visual stimulus implementing a simple visual determination of left or right optical expansion as a task that requires any cognitive or other thought processes sufficient to constitute the claimed display of a visual *cognitive* exertion exercise as it would be understood in view of the Applicant's specification. Accordingly, Applicant respectfully requests that the Examiner withdraw the rejection of claim 1.

B. Dependent Claims of Claim 1

While Applicant disagrees with additional aspects of the rejections of the claims that depend from claim 1 (i.e., claim 2-10, 13, 15-18, 22, 25 and 26), such as the Examiner's reliance on *Lawton*, Applicant submits that the proper allowance of claim 1 similarly requires allowance of its dependent claims.

C. Independent Claims 28, 30, 31, 36, 42 and 43

Moreover, Applicant submits that in view of the discussion with regard to claim 1, independent claims 28, 30, 31, 36, 42 and 43, which each claim Applicant's invention including a display with a "visual cognitive exertion exercise", are in condition for allowance. Similarly, their dependent claims 29, 32, 35, 37, 38, 41, 44-47, 50, 54, 57, 58 and 60-65 are in condition for allowance.

IV. Conclusion

Applicant notes additional disagreement with certain of the Examiner's other assertions concerning the rejections, the reading of the claim language and reliance on the prior art references. However, due to the absence of anticipation or obviousness in the cited art as discussed herein, a more detailed discussion thereof is unnecessary at this time.

Accordingly, as it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge

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Respectfully submitted,

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